

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 235 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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ASRAFKHAN DAUDKHAN PATHAN

Versus

STATE OF GUJARAT

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Appearance:

MR PRAVIN GONDALIYA for Petitioner

PUBLIC PROSECUTOR for Respondent No. 1

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CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 24/03/98

ORAL JUDGEMENT

1. Heard Ld.Advocate--Mr.Pravin S.Gondaliya  
appearing for petitioner. Rule. Mr.A.J.Desai, Ld.APP  
waives service of rule.

2. The petitioner has challenged the legality and  
propriety of the order passed by the Ld.Addl.Sessions  
Judge, Surat dated 18.3.98 in the proceedings of

3. The petitioner had moved Cri.Misc.Appln.No.391/98 in the court of Id.Addl.Sessions Judge, Surat praying for anticipatory bail in respect to an incident recorded at Limbayat Police Station on 8.3.98 around 8.00 p.m. It is contended by the petitioner that on 8.3.98 he being a First Grade Jamadar on duty as PSO at the relevant time one Raju Bharwad was in custody and in lock up for having committed offence made punishable under section 135(1) of the Bombay Police Act. That on the next day i.e. on 9.3.98 an offence was registered vide Cri.Reg.No.51/98 by the Police Inspector at the instance of one Raju Purshottam against one Sunil Cheater and Anil Sinde along with two unknown persons. That the complainant has stated interalia before the PI that in the night of previous day (8.3.98) the complainant slept on the slab of a room where one Ramesh Langda was residing. That along with them one Ashok was also slept. That around 3.00 p.m. in the night on hearing commotion he got up and saw that the accused Sunil Cheater along with one Anil Babu and 2/3 unknown persons had entered the room of Ramesh Langda forcibly. That at that time Sunil Cheater was holding a knife while Anil Sinde a dharia in his hand. That he along with the said Ramesh gave alarm. He has further stated that at the relevant time Sunil Cheater had given knife blow to Ramesh Langda on the left side of his chest and another blow near his neck. That said Ramesh also sustained injury on his left hand fingers while protecting himself. That after inflicting said injuries all the four accused had run away from the said place. That there after, the complainant--Raju Parshottam came down from the slab and went to enquire about Ramesh Langda. That on enquiry he found that Ramesh was profusely bleeding and his wife was crying. That the complainant, thereafter, call the Brother-in-Law of Ramesh who was residing in the neighborhood and they took Ramesh Langda to Civil Hospital for treatment. That at Civil Hospital Ramesh Langda was declared dead. The complainant has also stated in the complaint that Raju Bharwad was arrested on information given by Ramesh Langda and thereby to take vengeance said Sunil Cheater and Anil Sinde and others have assaulted Ramesh langda and have killed him. That thereafter the petitioner had read press report in the local daily newspaper "Pratap Dainik" on 12/3/98 and 14/3/98. That the press report also contained information that Raju Bharwad was permitted by the police to go out from lock up and to commit murder. On the said allegation the petitioner apprehended that he would be involved as he was on duty as PSO in the police station on 8.3.98 and thereby he

prayed for anticipatory bail in the event of his arrest in the Cri.Reg.No.51/98.

4. That during hearing of the said bail application the ld.advocate appearing for the petitioner moved an application-Exh.5 requesting the court to direct the Police Inspector to permit him to read the police papers of investigation. That vide impugned order the ld.Addl.Sessions Judge has rejected the said application holding that the petitioner has no right to peruse the police papers of pending investigation and therefore the petitioner can not be permitted to peruse the same.

5. Shri Shakeel Qureshi, Ld.advocate appearing on behalf of Pravin Gondaliya, in support of his submission that the order passed by the Ld.Addl.Sessions Judge is erroneous, improper and unjust and thereby deserves to be set aside, has referred and relied upon the following observations of this Court in the case of KOTTAM RAJU VIKRAM RAO vs STATE OF GUJARAT reported in 1977 GLR 107 :

"Thus, when a bail application under section 437 or 439 is being heard, and the question pertains to the liberty of the subject depending on the order which is to be passed on that bail application, it is clear that the subject approaching the court with prayer for bail should have an opportunity to meet the material collected during the course of investigation on the basis of which it is urged by the other side that the subject should not be released on bail because there are reasonable grounds for believing that he is guilty of an offence punishable with death or imprisonment for life. Rules of fairness apart from anything else do require that such material should be disclosed to the accused applying for bail.

It is clear that the investigating agency in the present case is bound to disclose the material collected during the course of investigation on which it wants to rely for the purpose of opposing the bail application on the accused. This material should be disclosed by the investigating agency preferably in the form of an affidavit to be filed by the investigating officer or officers stating therein the bare facts (devoid of inferences arising therefrom) which were disclosed during the investigation and on which reliance is placed"

6. I have carefully gone through the authority cited at Bar on behalf of the petitioner, particularly, the observations stated hereinabove. That in the instant case the petitioner is neither the accused of any offence registered as alleged by him and as such said observations are not applicable to the present case. The only apprehension shown by the petitioner is that the investigation officer might have recorded the statements of some of the witnesses who might have alleged something adverse against him and thereby in order to meet with such adverse statement of any witness the petitioner should have been given opportunity to read the police papers.

7. The order passed by the 1d.Addl.Sessions Judge does not appear to be unjust, improper or illegal. The petitioner having no right to peruse the statements of witnesses recorded by the investigation officer in complaint filed against the accused, the present petition can not be said to be maintainable.

8. On the above stated discussion, the petition fails and stands disposed of as rejected. Rule is discharged. No costs.